

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

FRANCISCO ALVAREZ,

Case No. 2:20-cv-01894-KJD-VCF

Petitioner,

ORDER

v.

WILLIAM HUTCHINGS, et al.,

Respondents.

Before the court is Francisco Alvarez's pro se 28 U.S.C. § 2254 habeas corpus petition (ECF No. 1-1). Pursuant to this court's order, he has now paid the filing fee (see ECF No. 4). The court has reviewed the petition pursuant to Habeas Rule 4 and directs that it be served on respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

Alvarez has also submitted a motion for appointment of counsel (ECF No. 1-2). There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir.1993). The decision to appoint counsel is generally

1 discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986), cert. denied, 481
2 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469
3 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case
4 are such that denial of counsel would amount to a denial of due process, and where the
5 petitioner is a person of such limited education as to be incapable of fairly presenting his
6 claims. See *Chaney*, 801 F.2d at 1196; see also *Hawkins v. Bennett*, 423 F.2d 948 (8th
7 Cir.1970). Here, Alvarez's petition presents his claims in a reasonably clear manner,
8 and the legal issues do not appear to be particularly complex. Therefore, counsel is not
9 justified. Alvarez's motion is denied at this time.

10 **IT IS THEREFORE ORDERED** that the Clerk detach, file, and
11 ELECTRONICALLY SERVE the petition (ECF No. 1-1) on the respondents.

12 **IT IS FURTHER ORDERED** that the Clerk add Aaron D. Ford, Nevada Attorney
13 General, as counsel for respondents and provide respondents an electronic copy of all
14 items previously filed in this case by regenerating the Notice of Electronic Filing to the
15 office of the AG only.

16 **IT IS FURTHER ORDERED** that the Clerk detach and file petitioner's motion for
17 appointment of counsel (ECF No. 1-2).

18 **IT IS FURTHER ORDERED** that the motion for counsel is **DENIED**.

19 **IT IS FURTHER ORDERED** that respondents must file a response to the petition,
20 including potentially by motion to dismiss, within **90 days** of service of the petition, with
21 any requests for relief by petitioner by motion otherwise being subject to the normal
22 briefing schedule under the local rules. Any response filed is to comply with the
23 remaining provisions below, which are entered pursuant to Habeas Rule 5.

24 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents
25 in this case be raised together in a single consolidated motion to dismiss. In other
26 words, the court does not wish to address any procedural defenses raised herein either
27 in seriatum fashion in multiple successive motions to dismiss or embedded in the
28 answer. Procedural defenses omitted from such motion to dismiss will be subject to

1 potential waiver. Respondents should not file a response in this case that consolidates
2 their procedural defenses, if any, with their response on the merits, except pursuant to
3 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
4 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they will
5 do so within the single motion to dismiss not in the answer; and (b) they will specifically
6 direct their argument to the standard for dismissal under § 2254(b)(2) set forth in
7 *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural
8 defenses, including exhaustion, should be included with the merits in an answer. All
9 procedural defenses, including exhaustion, instead must be raised by motion to dismiss.

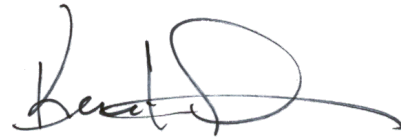
10 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents
11 specifically cite to and address the applicable state court written decision and state
12 court record materials, if any, regarding each claim within the response as to that claim.

13 **IT IS FURTHER ORDERED** that petitioner has **45 days** from service of the
14 answer, motion to dismiss, or other response to file a reply or opposition, with any other
15 requests for relief by respondents by motion otherwise being subject to the normal
16 briefing schedule under the local rules.

17 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed
18 herein by either petitioner or respondents be filed with a separate index of exhibits
19 identifying the exhibits by number. The parties will identify filed CM/ECF attachments
20 by the number or numbers of the exhibits in the attachment.

1 **IT IS FURTHER ORDERED** that, at this time, the parties send courtesy copies of
2 **any responsive pleading or motion and all INDICES OF EXHIBITS ONLY** to the
3 Reno Division of this court. Courtesy copies shall be mailed to the Clerk of Court, 400
4 S. Virginia St., Reno, NV, 89501, and directed to the attention of "Staff Attorney" on the
5 outside of the mailing address label. **No further courtesy copies are required unless**
6 **and until requested by the court.**

7
8 DATED: 8 February 2021.

A handwritten signature in blue ink, appearing to read "Kent J. Dawson", with a large, stylized loop at the end.

KENT J. DAWSON
UNITED STATES DISTRICT JUDGE